



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/612,009

07/03/2003

Rieko Fukushima

7906.0018

5452

22852

7590

09/19/2008

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP

901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

HAJNIK, DANIEL F

ART UNIT

PAPER NUMBER

2628

MAIL DATE

DELIVERY MODE

09/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/612,009	Applicant(s) FUKUSHIMA ET AL.	
	Examiner DANIEL F. HAJNIK	Art Unit 2628	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1,2,4,5,7-10,16 and 17.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Ulka Chauhan/
 Supervisory Patent Examiner, Art Unit 2628

Continuation of 3. NOTE: The new issues include: Amendments to claims 1 and 5, which now require the feature of "detecting lightness of the light sources based on depth of the shadows at the detectors". This changes the scope of the claims requiring further search and/or consideration..

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues the motivation to combine Olympus and Petrich (page 9 in filed response).

The examiner respectfully maintains that the motivation is proper because for the following reasons: (1) Olympus and Petrich deal with a similar field of technology. Olympus deals directly with detecting light to produce computer generated images (as shown in figures 1 and 2 of Olympus). Petrich also deals with a very similar area of technology, which is dealing with shadows and computer image analysis (see figures 5 and 10 and [0033] of Petrich). One of ordinary skill in the art is more likely to combine together systems that perform related functions in a similar technological field. In addition, the motivation is proper because: (2) Petrich does add accuracy because Petrich deals with the light position in addition the light direction. Olympus has the limitation of only detecting the light direction but not the position per se. By knowing the position as well as the direction, the shadows generated may be more accurate because more information is known about the light source.

Applicant remarks there is no indication that the method used in Petrich is more accurate than the method used in Olympus and further remarks:

Moreover, even if two light sources were closely grouped together in Olympus to effectively function as a single light source, this would result in the creation of a single shadow, rather than a plurality of shadows as recited in the independent claims.(page 9 in filed response).

The examiner respectfully maintains that the rejections are proper also because in the combination of Olympus and Petrich, two light sources may still have two separate shadows even when grouped together. For example, there may be slight differences in the shadow angles themselves. However, through the combination where Petrich teaches of using multiple light sources, and with the detectors of Olympus, the combination would still produce a correct result. For example, in figure 4 of Olympus, two shadows that are slight offsets from one another would still overall shade the same general area that is shadowed in the detected plane 14. By having multiple shadows in the same general area on this plane, the computer generated output in figure 2 of Olympus would still generate a relevant shading pattern related to these shadows. This is due the similarity in the angles of the light sources even if they are slightly different from other another. Furthermore, each light source in the combination would have its own separate shadow cast from the bar 15 in figure 4 of Olympus on the detector.

The examiner respectfully maintains that the rejections are proper because applicant's remaining arguments are based upon differences between the previous prior art rejections and the recently added limitations to the claims. The prior art rejections presented in the previous office action are based upon the claim language present at the time of writing the previous office action.